

EXHIBIT 8(a)

P.J. Corless

March 25, 2008

Pomona, NY

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIARWOOD FARMS, INC.,

Plaintiff.

- vs - 07civ. 3657 (clb)

TOLL BROS., INC.

Defendant.

TUESDAY, MARCH 25, 2008
1:08 P.M.

DEPOSITION of P.J. CORLESS, called for
examination by counsel for the Defendants, held
at the Pomona Village Hall, 100 Ladentown Road,
Pomona, New York 10870, before Nancy Anne Flynn,
Registered Professional Reporter and a Notary
Public in and for the State of New York, and
transcribed under her direction.

Alderson Reporting Company
1-800-FOR-DEPO

e68a64b3-a46a-4b53-9fc3-3b5497e99759

P.J. Corless

March 25, 2008

Pomona, NY

Page 2

1 A P P E A R A N C E S :

2

3

JOSEPH J. HASPEL, ESQ.

Attorney for Plaintiff

4

40 Matthews Street

Suite 201

5

Goshen, New York 10924

(845) 294-8950

6

7

WILLIAM HARRINGTON, ESQ.

BLEAKLEY, PLATT & SCHMIDT, LLP

8

Attorneys for Defendant

One North Lexington Avenue

9

Seventh Floor

White Plains, New York 10272

10

(845) 354-0545

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Alderson Reporting Company
1-800-FOR-DEPO

e68a64b3-a46a-4b53-9fc3-3b5497e99759

P.J. Corless

March 25, 2008

Pomona, NY

Page 3

1 CONTENTS

2	EXAMINATION OF P.J. CORLESS	PAGE
3	BY MR. HARRINGTON	4
4	BY MR. HASPEL	50
5	BY MR. HARRINGTON	62

6
7
8 EXHIBITS

9	DEFENDANT'S DESCRIPTION	PAGE
10	A Chapter 119 of Village Code re	9
11	steep slopes law.	
12	B Copy of chapter 118 of the Village	13
13	Code re Subdivision Land.	
14	C Cover Sheet Preliminary Subdivision	34
15	Halley Estates II.	
16	C-1 Drawing number seven from Exhibit C,	39
17	drawing entitled "Disturbed Slope Map."	
18	D One-page village calendar.	36
19	E Documents received pursuant to FOIL	47
20	request.	

21 (Exhibits retained)

P.J. Corless

March 25, 2008

Pomona, NY

Page 4

1 P.J. CORLESS,
2 having been duly sworn by a Notary
3 Public for the State of New York,
4 testified as follows:

5 EXAMINATION BY

6 BY MR. HARRINGTON:

7 Q Good afternoon, Mr. Corless.

8 A Good afternoon.

9 Q My name is Bill Harrington and I'm
10 with the firm of Bleakley, Platt & Schmidt in
11 White Plains, and we represent Toll Bros in a
12 lawsuit, which is the defendant in a lawsuit
13 brought in the Southern District of New York by
14 Briarwood Farms, Inc.

15 You are here today pursuant to
16 subpoena, correct?

17 A Yes.

18 Q Can you give, please, the reporter
19 for the record your address, and you can use the
20 village address if you like.

21 A No, I use my home address, 44 Halley
22 Drive, Pomona, New York.

23 Q Can you just briefly outline your
24 educational background for me?

25 A I have a Bachelor's of Civil

P.J. Corless

March 25, 2008

Pomona, NY

Page 5

1 P.J. Corless
2 Engineering, a Master's of Business in Economics
3 and a Master's in Environmental Technology, and
4 licensed as a Professional Engineer in New York
5 and New Jersey and licensed as a land surveyor as
6 well.

7 Q Have you ever been deposed before?

8 A Yes, I have.

9 Q So, you know generally the rules?

10 A Generally.

11 Q Let me go through them very
12 briefly. Please allow time to expire between
13 when I ask the question and you respond so the
14 reporter can get everything down. If you don't
15 understand a question, please let me know and I
16 will try and rephrase it in a fashion so you can
17 understand it. Please give audible responses to
18 all my questions, and in the event you don't know
19 the answer to my question, please tell me.

20 A Okay.

21 Q Don't guess. To the extent I ask a
22 question and it's not clear, please tell me, all
23 right?

24 A Yes.

25 Q Okay. Now, did you speak to anyone

P.J. Corless

March 25, 2008

Pomona, NY

Page 6

1 P.J. Corless

2 in preparation for this deposition?

3 A The village attorney, I told her I
4 was given a subpoena, and that was all.

5 Q Did you review any documents?

6 A I did not.

7 Q Are you aware of the nature of the
8 lawsuit between the parties?

9 A No.

10 Q Who is your current employer?

11 A I'm self-employed, Corless &
12 Associates Engineers. I am under contract with
13 the Village of Pomona for the past 31 years.

14 Q In what capacity do you contract
15 with the Village of Pomona?

16 A As the village engineer.

17 Q And you've held that position for
18 the last --

19 A Thirty-one.

20 Q So it's fair to say that you're
21 familiar with the Village Code of the Village of
22 Pomona?

23 A I'm reasonably familiar with it,
24 yes.

25 Q In your capacity as village

P.J. Corless

March 25, 2008

Pomona, NY

Page 7

1 P.J. Corless

2 engineer, do you ever work with the village's
3 planning board?

4 A Yes.

5 Q And in that work do you become
6 involved with the planning board's review of
7 proposed subdivision applications?

8 A I do.

9 Q Does the village have a steep slope
10 law?

11 A Yes, it does.

12 Q And are you familiar with it
13 generally?

14 A I'm familiar with it, yes.

15 Q In your capacity as village
16 engineer, have you ever been involved with the
17 planning board's review of a subdivision
18 application involving steep slopes?

19 A Yes, I have.

20 Q Can you describe for me in general
21 terms what the planning board does with respect
22 to a subdivision application that involves land
23 that has steep slopes as defined by the
24 ordinance?

25 A The applicant is required to produce

P.J. Corless

March 25, 2008

Pomona, NY

Page 8

1 P.J. Corless

2 maps that have topography illustrating two-foot
3 contours, and then that piece of land is
4 identified for slopes within various percentages
5 up to 15 percent, up to 24 percent, and greater
6 than that, in general terms. And the purpose of
7 that is to determine the amounts of steep slopes,
8 extremely steep slopes, and moderate slopes.

9 Q And what is the significance, if
10 any, of property that is defined as moderate,
11 extreme, or however the ordinance defines it?

12 A The intent of the ordinance was to
13 have the applicant evaluate the necessity to
14 build on steep slopes, and to encourage not to
15 build on the steep slopes so that you don't
16 create erosion control and soil problems related
17 to that kind of construction.

18 Q And that would also lead to
19 potential runoff and water pollution, correct?

20 A Yes.

21 MR. HARRINGTON: I'm going to
22 mark as Exhibit A, Chapter 119 of what
23 I understand is the Village Code, which
24 we obtained on line, which is the steep
25 slopes law, which is entitled Site

P.J. Corless

March 25, 2008

Pomona, NY

Page 9

1 P.J. Corless

2 Development.

3 (Chapter 119 of Village Code re
4 steep slopes law was marked as
5 Defendant's Exhibit A for
6 identification.)

7 Q Mr. Corless, I show you what we
8 marked as Exhibit A. I can represent we obtained
9 it off the website. If you could just in general
10 review it very quickly and confirm for me that
11 that is, in fact, the Village's steep slope law?

12 A It looks like our law. I brought my
13 code book with me, it looks like our --

14 Q I'm not trying to trick you.

15 A I understand. It looks like the law
16 we've discussed, moderately steep, very steep,
17 and extremely steep.

18 Q Let's go through it a little bit.
19 If you could look at section 119-1, subsection
20 (a) would be the second page.

21 A Yes.

22 Q That defines moderately steep slope,
23 very steep slope, and extremely steep slope; do
24 you see that?

25 A Yes.

P.J. Corless

March 25, 2008

Pomona, NY

Page 10

1 P.J. Corless

2 Q And that's what you referred to
3 earlier?

4 A Yes.

5 Q What is your understanding of the
6 purpose of creating three categories of slope?

7 A The purpose, again, was to control
8 land disturbance on areas that would result in
9 water pollution impacts and perhaps even some
10 slope unstabilization, et cetera.

11 Q Okay. Now, if you could refer to
12 Section 119-2, which is Article 2 of the
13 ordinance?

14 A Yes.

15 Q And subsection (a) states, quote,
16 "Regulated Activities: It shall be unlawful to
17 create a new steep slope or to disturb an
18 existing steep slope, or to create any other
19 disturbance of land on a steep slope, including
20 the installation of retaining walls, other than
21 an exempt activity as defined in subsection (b)
22 hereof without having first obtained site plan
23 approval from the planning board or such other
24 approving authority as provided in this chapter
25 and a work permit from the building inspector."

P.J. Corless

March 25, 2008

Pomona, NY

Page 11

1 P.J. Corless

2 Now, is that your understanding of
3 the law?

4 A Yes.

5 Q If you go to section 119-4 under the
6 title Approving Authority, the permit in question
7 is known as a site development plan permit; is
8 that right?

9 A Yes.

10 Q And is it fair to say that under the
11 law, where you have either a very steep slope as
12 defined in the ordinance or an extremely steep
13 slope as defined in the ordinance, that you have
14 to get approval from the planning board for such
15 a permit?

16 A The applicant does, yes, that's
17 correct.

18 Q And it's only in the instances of a
19 moderately steep slope that the village engineer
20 can issue the permit, correct?

21 A That's correct. Actually, I review
22 the site plan and submit a recommendation to the
23 building inspector. He issues the building
24 permit, if you will, I mean procedurally.

25 Q If we go to section 119-5 of Exhibit

P.J. Corless

March 25, 2008

Pomona, NY

Page 12

1 P.J. Corless

2 A, that sets forth in detail the information that
3 an applicant for a steep slope permit would have
4 to provide, correct?

5 A Correct.

6 Q Section 119-6 of the ordinance
7 reflects the various fees that would have to be
8 paid by an applicant seeking a steep slope
9 permit, correct?

10 A Correct.

11 Q And that includes fees to be placed
12 in escrow to pay for the Village's consultants to
13 review the application, correct?

14 A Yes.

15 Q Now, you go back to 119-4,
16 subsection (b) states, quote, "Where the planning
17 board is reviewing an application under the
18 provisions of chapter 118 of the Village Code, it
19 shall also be the approving authority for any
20 site development plan permit required in
21 connection with such application." What is
22 chapter 118?

23 A Subdivision, realty subdivision, any
24 realty subdivision falls under the planning board
25 purview.